

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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PHILIP PIDOT, NANCY HAWKINS and STEVEN AXELMAN, individually and as representatives of eligible Republican Party voters in Suffolk, Nassau and Queens Counties within New York's Third Congressional District,

Civil Action No.:
16-cv-00859

Plaintiffs,

-against-

NEW YORK STATE BOARD OF ELECTIONS;
SUFFOLK COUNTY BOARD OF ELECTIONS;
NASSAU COUNTY BOARD OF ELECTIONS;
BOARD OF ELECTIONS IN THE CITY OF NEW YORK; PETER KOSINSKI and DOUGLAS KELLNER, in their official capacities as Commissioners and Co-Chairs of the New York State Board of Elections; ANDREW J. SPANO and GREGORY P. PETERSON, in their official Capacities as Commissioners of the New York State Board of Elections; TODD D. VALENTINE and ROBERT A. BREHM, in their official capacities as Co-Executive Directors of the New York State Board of Elections; and JACK MARTINS,

**DECLARATION IN
RESPONSE TO ORDER
TO SHOW CAUSE**

Defendants.

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LEONARD G. KAPSALIS, an attorney duly admitted to practice law in the courts of the State of New York and admitted pro hac vice to appear before this Court in this case, hereby affirms that the following is true, under penalties of perjury, pursuant to New York Civil Practice Law and Rules ("CPLR") 2106:

1. I am an Assistant County Attorney in the office of DENNIS M. BROWN, Suffolk County Attorney and attorney of record for the Defendants ANITA S. KATZ and NICK LALOTA, Commissioners constituting the Suffolk County Board of Elections (hereinafter referred to as the "Suffolk Board"). I am fully familiar with the facts and circumstances set forth herein based upon the information contained in my file and based upon communications with the board.

2. I submit this Declaration on behalf of the Suffolk Board in response to the Plaintiffs' motion brought by way of Order to Show Cause, granted by this Court on July 25, 2016, for an Order directing a Republican Party primary election for New York's Third Congressional District Party with a ballot that names both Defendant Jack Martins and Plaintiff Philip Pidot, for a date that complies with federal law, particularly, UOCAVA and the MOVE Act or, in the alternative, if it is determined that such an election can not be scheduled for a date that complies with the UOCAVA 45-day requirement, requiring the Defendant, New York State Board of Elections to seek a "hardship exemption," or, in the alternative, directing such primary election on a date that is practicable for the Defendant Boards, and other related relief.

3. The two Commissioners that comprise the Suffolk Board are not in complete agreement as to the response to the within motion and thus, the Suffolk Board can take no formal position on the merits of the action. We respectfully submit, however, the affidavits of Commissioner Anita S. Katz and Nick La Lota for such consideration as this Honorable Court deems appropriate.

WHEREFORE, it is respectfully requested that the foregoing be considered in connection with the granting of any relief upon the within motion.

Dated: Hauppauge, New York
August 5, 2016

Respectfully submitted,

Dennis M. Brown
Attorney for Defendants
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By: Leonard G. Kapsalis
Leonard G. Kapsalis
Assistant County Attorney